

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

HENRY JOE DENT Jr.,	§	
Petitioner,	§	
VS.	§	CIVIL ACTION NO.4:09-CV-237-Y
	§	
RICK THALER, Director,	§	
T.D.C.J., Correctional	§	
Institutions Div.,	§	
Respondent.	§	

ORDER ADOPTING MAGISTRATE JUDGE'S FINDINGS AND CONCLUSIONS and,  
TRANSFERRING CASE TO THE COURT OF APPEALS FOR THE FIFTH CIRCUIT

Before the Court is the petition for writ of habeas corpus under 28 U.S.C. § 2254 of petitioner Henry Joe Dent Jr., and the September 11, 2009, findings, conclusions, and recommendation of the United States magistrate judge. The magistrate judge gave the parties until October 2, 2009, to file written objections to the findings, conclusions, and recommendation. As of the date of this order, no written objections have been filed.

The Court has reviewed the pleadings and the record in this case and has reviewed for clear error the proposed findings, conclusions, and recommendation. The Court concludes that, for the reasons stated by the magistrate judge, the motion to dismiss must be denied, and this case should be transferred to the United States Court of Appeals for the Fifth Circuit.<sup>1</sup>

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<sup>1</sup>The United States Court of Appeals for the Fifth Circuit has authorized the transfer of such successive petitions under § 2254 to that court. See *In re Epps*, 127 F.3d 364, 365 (5<sup>th</sup> Cir. 1997); see also *United States v. Stapleton*, Criminal No. 04-30004, 2008 WL 5169571, at \*1 (W.D.La. 2008)

(Because [§ 2255 movant] has not received [authorization from the court of appeals] or even filed with the Fifth Circuit a § 2244(b)(3)(A) petition for authorization to file a successive habeas petition in district court, this Court lacks jurisdiction over the instant motion. However, because the plaintiff is *pro se*, and in the interests of judicial economy, it makes sense to transfer this matter to the Fifth Circuit instead of simply dismissing it for lack of jurisdiction.)

Therefore, the findings, conclusions and recommendation of the magistrate judge are ADOPTED.

Respondent's motion to dismiss (docket no. 12) is DENIED.

Henry Joe Dent Jr.'s petition under 28 U.S.C. § 2254 is TRANSFERRED to the United States Court of Appeals for the Fifth Circuit.

SIGNED October 14, 2009.

  
TERRY R. MEANS  
UNITED STATES DISTRICT JUDGE